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MEMO ENDORSED

JUN 01 2020

Hon. Judge: Kenneth M. Karas

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
Plaintiff,

vs.

Case No: 17-CR-737 (KMK)

Emergency Motion for Compassionate
Relief Due To Coronavirus and
the First Step Act

Luis Ortiz-Correa,

DEFENDANT.

Comes now Luis Ortiz-Correa, in his PRO SE capacity. And respectfully files this motion for compassionate Release and Pursuant to 18 USC § 624 and 18 USC 40412 (Duties of Bureau of Prisons) and the First Step Act of 2018. Given exceptional circumstances of the current coronavirus pandemic, Mr. Ortiz-Correa files this as an emergency motion and invokes Bureau of Prisons Program statement 5050.50

On December 21, 2018, Congress passed, and the President signed into law the "First Step Act" of 2018 which, under Title I of USC §§ 3582 and 4205(g). Among these changes a prisoner may petition the sentencing court for compassionate release reduction of sentence after the Warden of PRISONS fails to respond to prisoner's request, or after the prison has exhausted administrative remedies. 28 CFR 571.61-62. More over an appeal process may take up more than a year and by that time the coronavirus would have claimed more victims inside the prison system.

Given the current Events of the coronavirus Pandemic, Mr. Ortiz-Correa is very concern, and for good reason, That he will get infected by the virus while in the custody of the Bureau of Prisons. The Bureau of Prisons ("BOP") has reported that a total of Eight inmates have died. The First inmate was Patrick Jones (BOP-83582-18) who died as a result of the coronavirus on March 28, 2020. These numbers are expected to increase. More than 100 inmates in one prison alone, FCI OAKDALE, Are under Quarantine, And four staff members have tested positive for the disease, more than 250 inmates nationwide are infected. The BOP is not equipped with the necessary staff and medical supplies needed to handle the rapid spread of the virus. See 18 USC 4042 Duties of the Bureau of Prisons; (2) Provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise; (3) Provide for the protection . . .

In fact, the union representing Bureau of Prisons officers filed a complaint with the Occupational Safety and Health Administration against the Bureau of Prisons, saying officials were "PROLIFERATING the spread of a knew and deadly contagion both within our prison and to our surrounding communities".

Already Jurisdictions around the country have begun releasing prison populations that are susceptible to Covid-19 exposure. See E.g., L.A. County releasing some inmates from jail to combat Coronavirus. L.A. Times, Mar. 16, 2020, available at: <http://www.latimes.com/california/story/2020-03-16/la-jail-population-arrest-down-amid-coronavirus>; NYC Board of Corrections calls on City to begin process of releasing certain prisoners in response to Covid-19, sentencing law and Policy BLOG, available at: https://sentencing.typepad.com/sentencing_law_and_policy/2020/03/NYC-Board-of-Correction-calls-on-city-to-begin-the-process-of-releasing-certain-prisoners-ASAP-in-response-to-the-mounting-panic.html.

U.S. Attorney General William P. Barr in early April directed Federal prisons officials to accelerate and expand early release programs for the sickest inmates. Hence, release under 18 U.S.C. § 3624(c) is particularly warranted in this case because Mr. Ortiz-Carrea does not present substantial risks to the community because upon his release he will be on a 3 year supervised release.

This court has it's supervisory powers to consider the rapid changing world conditions and protect the safety of Mr. Ortiz-Correa. The Bureau of Prisons is not a hospital and will not give him the adequate care once he is infected. The evil and contagious virus attacks the respiratory system and seeks persons with weak immune defense. There is no cure for this deadly virus. Mr. Ortiz-Correa is tormented with the thought that he could get easily infected to this disease. He is at risk (High) risk according to the centers for disease control. The risk is heightened by the circumstances inside of the BOP, where there is already confirmed positive inmates, several other inmates are under Quarantine. Mr. Ortiz-Correa he cannot effectively social distance himself.

Mr. Ortiz-Correa has learned significantly from his mistakes that brought him to his incarceration. He is currently serving an 77 months sentence with a release date 11-19-2022. He has some mental health problems like suicide attempts, posttraumatic stress disorder, bipolar and Asthma. He has readied himself to reenter society as a contributing member. Mr. Ortiz-Correa fear that's just a matter of time before he becomes sick and the BOP does not have a cure to save his life.

Mr. Ortiz-Correa has standing to bring this motion and does not need to prove he will die in prison. The court is aware of the major pandemic that is spreading rapidly all over the world.

Mr. Ortiz-Correa deserves mercy with the passage of the First Step Act, Congress emphasized the imperative of reducing unnecessary incarceration and avoiding unduly punitive sentences that do not serve the ends of justice. United States v. Simons, No. 07-CR-00874, 2019 WL 1760840, at *8 (E.D.N.Y. Apr. 22, 2019).

The New York Times has explained that jails are a much more dangerous place to be than a cruise ship. Soap and hand sanitizer is only available if one can purchase it from commissary.

Accordingly, because he qualifies for compassionate relief under the First Step Act of 2018 § 3624, and the BOP cannot protect him pursuant to 18 USC 4042, the current conditions militate strongly in favor of granting compassionate relief. See USA v. Franklin Campos (EDNY 93-CR-1022) granting Campos serving a life sentence to compassionate release.

Wherefore, I respectfully request that this Honorable court give Mr. Ortiz-Correa meaningful consideration and grant this motion in the name of justice or any relief this court deems appropriate.

Application for compassionate release, under 18 U.S.C. Section 3582 is denied. First, Mr. Ortiz-Correa has not fully exhausted his administrative remedies, as explained in the Government's Opposition. (Doc. #30). Indeed, he appears not to have initiated his administrative remedies. Second, even if exhausted, Mr. Ortiz-Correa has not explained why there are extraordinary or compelling reasons for his release. His claims of asthma are unsupported by any medical records and, in any event, asthma is not among the top ten risk factors based on empirical data from New York. Moreover, Mr. Ortiz-Correa is not within the age range that suggests added risk and the other medical issues he asserts are not listed as risk factors. Finally, to release Mr. Ortiz-Correa at this point would not promote respect for the law, as his crime of conviction was serious, or promote the public's safety, especially given the evidence of his attempt to flee from law enforcement prior to his arrest. This denial is without prejudice should Mr. Ortiz-Correa be able to exhaust his administrative remedies and add evidence to support his medical assertions.

So Ordered.

6/9/20

Respectfully submitted,

Luis Ortiz-Correa,
Fed. Reg. No: 79194-054
May, 15, 2020
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28 MAY 2020 PM21



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